

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

NATIONAL SWIMMING POOL  
FOUNDATION, a Colorado  
Nonprofit Organization,

Plaintiff,

V.

KATHLEEN KELLEY, et al.,

Defendants.

8:10CV117

# MEMORANDUM AND ORDER

Defendant Kerry Winterer (“Winterer”) filed a motion to dismiss him from this action pursuant to [Fed. R. Civ. P. 12\(b\)\(2\)](#). ([Filing 32](#).) Winterer argued that there had not been proper service of process upon him in his official capacity because the summons and complaint were not served upon the Nebraska Attorney General’s Office, as required by [Neb. Rev. Stat. § 25-510.02](#). Subsequent to the filing of his motion to dismiss, this alleged service defect was cured as Winterer was served at the Office of the Attorney General ([filing 42](#)). Winterer filed an answer to Plaintiff’s complaint on July 1, 2010 ([filing 47](#)).

Accordingly,

IT IS ORDERED that Defendant Winterer's motion to dismiss ([filing 32](#)) is denied as moot.

July 7, 2010.

BY THE COURT:

Richard G. Kopf

United States District Judge